

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

16-CR-776 (VEC)

JOSEPH PERCOCO,  
a/k/a "Herb,"  
ALAIN KALOYEROS,  
a/k/a "Dr. K,"  
PETER GALBRAITH KELLY, JR.,  
a/k/a "Braith,"  
STEVEN AIELLO,  
JOSEPH GERARDI,  
LOUIS CIMINELLI,  
MICHAEL LAIPPLE,  
KEVIN SCHULER,

Defendants.

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**SEALED DECLARATION OF DANIEL C. OLIVERIO**

DANIEL C. OLIVERIO, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that the following is true and correct:

1. I am a member of Hodgson Russ LLP, counsel of record for Defendant Louis P. Ciminelli. Timothy W. Hoover and I are trial counsel for Mr. Ciminelli.
2. This declaration is made upon my personal knowledge.
3. It is offered in support of the joint motion of Defendants Louis Ciminelli, Michael Laipple, and Kevin Schuler (the "Buffalo Defendants") for the issuance of an order, pursuant to Federal Rule of Criminal Procedure 21(b), transferring the case (Counts One, Four, and Five) against the Buffalo Defendants to the United States District Court for the Western

District of New York at Buffalo, for pretrial proceedings, substantive motion practice and trial, in the interest of justice, for the convenience of witnesses and the parties, and for judicial economy. This declaration is filed under seal to protect and maintain the confidential health information of Mr. Ciminelli set forth below.

4. In the fall of 2016 and continuing into the holiday season and New Year, Mr. Ciminelli began to experience increasingly intense [REDACTED].

5. Having a history of [REDACTED], Mr. Ciminelli consulted with his physicians in Buffalo, New York, and he took steps to [REDACTED] [REDACTED] required to perform daily tasks.

6. Unlike [REDACTED] and treatment, Mr. Ciminelli's symptoms intensified as time went on.

7. Accordingly, on December 29, 2016, Mr. Ciminelli underwent a detailed [REDACTED] and it was discovered that he had a [REDACTED] [REDACTED].

8. After consulting with various specialists, it was recommended that Mr. Ciminelli immediately [REDACTED] and prevent any further [REDACTED].

9. Almost immediately thereafter, on January 3, 2017, Mr. Ciminelli underwent a procedure to [REDACTED] [REDACTED]. That procedure proved successful.

10. However, at the same time and as part of his diagnosis, it was suspected that Mr. Ciminelli had [REDACTED] [REDACTED]. That diagnosis was received on or about January 4, 2017, at DENT Neurological Institute in Buffalo, New York, and was confirmed after further testing.

11. Working with his Buffalo-based primary and consulting physicians, Mr. Ciminelli traveled to the Mayo Clinic in Rochester, Minnesota, to meet with Dr. [REDACTED] [REDACTED], an expert in [REDACTED], for purposes of undergoing further diagnosis and for the development of a treatment plan.

12. Unfortunately, the diagnosis was confirmed.

13. Mr. Ciminelli's treating physicians at the Mayo Clinic have developed an initial treatment protocol that commenced during the week of January 23, 2017.

14. Mr. Ciminelli is under the care of [REDACTED] [REDACTED], at the Mayo Clinic, in Phoenix, Arizona. A letter from [REDACTED], dated January 25, 2017 and detailing the treatment plan, is attached as Exhibit A.

15. The treatment protocol will include [REDACTED] with daily pills. Weekly injections and infusion treatment will occur at the Mayo Clinic facility in Arizona, which is near Mr. Ciminelli's long-time second home in Scottsdale, Arizona.

16. This treatment plan would normally continue "without break, for four months. If he has achieved a degree of [REDACTED] we would immediately proceed with [REDACTED] [REDACTED]. This is a complex process that includes intensive testing, [REDACTED]

[REDACTED], admission to hospital for 3 weeks, and a minimum 3 months recovery thereafter. If he does not respond to the initial [REDACTED], he would require more treatment before [REDACTED] would be possible. At this point in his treatment it is impossible to predict his response.” Exhibit A.

17. Dr. [REDACTED] advises that to “provide Mr. Ciminelli with the best possible outcome I have strongly requested that he stay here in town so as to strictly adhere to the [REDACTED] protocol over the next several months. We will see him weekly throughout this process, and we will monitor his response and tolerance of the protocol closely.” *Id.* A longer-term strategy will be developed after the [REDACTED] is completed. Dr. [REDACTED] advises that “during any recuperative period, I strongly recommend that Mr. Ciminelli be at his home either here or in Buffalo where he can be close to his treating and consulting physicians, and further that he avoid the physical and personal stress of extensive travel during his course of treatment.” *Id.*

18. It is requested that the Court consider Mr. Ciminelli’s current and unfortunate health situation under Factor 10, when evaluating that and all other factors set forth in the joint motion for transfer made by him, Mr. Laipple and Mr. Schuler.

Dated: Buffalo, New York  
February 6, 2017

**HODGSON RUSS LLP**  
*Attorneys for Defendant Louis Ciminelli*

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**FILED UNDER SEAL**



5881 East Mayo Boulevard

Phoenix, Arizona 85054

**FILED UNDER SEAL**

January 25, 2017

Re. Louis P. Ciminelli - DOB [REDACTED]

To Whom It May Concern:

This is to certify that Louis Ciminelli is in my care and is currently undergoing [REDACTED].

Mr. Ciminelli has [REDACTED]. It has already caused [REDACTED] [REDACTED] that have restricted his mobility and capacity to travel.

As a result, he has already commenced [REDACTED]. We would normally plan for this to continue, without break, for four months. If he has achieved a [REDACTED] we would immediately proceed with [REDACTED]. This is a complex process that includes intensive testing, [REDACTED], admission to hospital for 3 weeks, and a minimum 3 months recovery thereafter. If he does not respond to the initial [REDACTED], he would require more treatment before [REDACTED] would be possible. At this point in his treatment it is impossible to predict his response.

To provide Mr. Ciminelli with the best possible outcome I have strongly requested that he stay here in town so as to strictly adhere to the [REDACTED] protocol over the next several months. We will see him weekly throughout this process, and we will monitor his response and tolerance of the protocol closely. Once he has completed his [REDACTED], we will discuss his longer-term strategy and prognosis. Similarly, during any recuperative period, I strongly recommend that Mr. Ciminelli be at his home either here or in Buffalo where he can be close to his treating and consulting physicians, and further that he avoid the physical and personal stress of extensive travel during the course of his treatment.

We are deeply dedicated to the care of our patients at Mayo Clinic. Long-term prognosis in [REDACTED] is very dependent on [REDACTED], and I would not want anything to prevent Mr. Ciminelli from receiving the best care possible.

Sincerely,

[REDACTED]

Professor of Medicine, Mayo Clinic College of Medicine

Associate Dean, Mayo Clinic School of Graduate Medical Education

Deputy Director – Education, Mayo Clinic Cancer Center

Associate Medical Director, Department of Development

Mayo Clinic in Arizona

5777 East Mayo Boulevard, Phoenix, Arizona 85054

Tel [REDACTED]

Email: [REDACTED]

**EXHIBIT A TO SEALED DECLARATION OF DANIEL C. OLIVERIO, DATED FEBRUARY 6, 2017**